



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDB-DR, FFT

### Introduction

In this application for dispute resolution, the tenant applied on April 2, 2022 for:

- an order for the return of the security deposit and/or pet damage deposit; and
- recovery of the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

### Issues to be Decided

- 1) Is the tenant entitled to a monetary order for the return of the security deposit and pet damage deposit?
- 2) Is the tenant entitled to the filing fee?

### Background and Evidence

While I have considered the testimony and presented documentary evidence of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars regarding the tenancy. It began October 1, 2018; the tenant vacated the unit on May 7, 2020; rent was \$4,000.00, due on the first of the month; and the tenant paid a security deposit of \$2,000.00 and a pet damage deposit of \$2,000.00, neither of which the landlord has returned.

The parties agreed that a move-in inspection was completed, and a copy of the report was provided to the tenant. The parties agreed that they did not complete a move-out inspection together, and that a copy of a move-out inspection report was not provided to the tenant. The parties agreed that the tenant provided a forwarding address in writing on March 30, 2020, in person.

The tenant testified that she told the landlord by email that he may retain part of the deposits to repair the stovetop, but did not specify a dollar amount at the time because the parties did not know how much the repair would cost. The landlord testified the repair cost just under \$297.00; the tenant testified the landlord could retain \$297.00 to pay for that repair.

The tenant testified that she told the landlord that he may retain part of the deposits to repair scratches to the floor made by her dogs, but again did not specify a dollar amount at the time because the parties did not know how much the repair would cost. In a May 21, 2020 email to the landlord, submitted as evidence, the tenant stated: "I just got a call from [name], who finished the floors. I told him that you would be paying for that expense out of my damage deposit."

The landlord testified that repair of the scratches would have required the whole floor to be refinished, so instead, a coating was applied to the floor, which the tenant had paid for. The tenant testified that she had not paid for the floor coating, but had merely arranged for it to be applied; the tenant testified that the person who did the work had not yet been paid.

The landlord testified that the application of the floor coating cost \$735.00. In the hearing, the tenant submitted that the landlord may retain an additional \$367.50 of her deposits to cover half of the coating application cost.

### Analysis

While I have considered the presented documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

Section 38(1) states:

**38(1)** Except as provided in subsection (3) or (4)(a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(4) permits a landlord to retain an amount from a security deposit or a pet damage deposit if, at the end of the tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant.

Section 38(6) states:

- (6) If a landlord does not comply with subsection (1), the landlord
  - (a) may not make a claim against the security deposit or any pet damage deposit, and
  - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The parties agreed that the tenant provided the landlord with her forwarding address in writing on March 30, 2020, in person.

The parties agreed that the landlord has not returned any portion of the \$2,000.00 security deposit or the \$2,000.00 pet damage deposit.

The tenant testified that she had given the landlord permission to keep an unspecified portion of the deposits to cover the cost of repairing the stovetop and the cost of repairing scratches in the floor made by her dog.

The tenant testified the landlord may retain \$297.00 for the repair of the stovetop, and \$367.50, which is half the cost of the application of the floor coating. However, considering the tenant's email in which she told the landlord he may retain an unspecified amount from her deposits to pay the floor finisher, and did not state in the

email that the landlord may retain only half the cost of the application of the coating, I find the landlord is entitled to retain from the tenant's pet damage deposit the full cost of the application of the floor coating, which is \$735.00.

The \$2,000.00 security deposit less \$297.00 for the stovetop repair leaves \$1,703.00.

The \$2,000.00 pet damage deposit less \$735.00 for the floor coating leaves \$1,265.00.

The total of the two remaining deposits is \$2,968.00.

As the landlord has not repaid or made a claim against the deposits within 15 days after the end of the tenancy, I find the landlord is required to pay the tenant double the remaining amount of the security deposit and pet damage deposit, for a total of \$5,936.00 ( $2,968 \times 2 = 5,936$ ). This calculation follows Example B of how to double deposits, from [Policy Guideline 17. Security Deposit and Set Off](#).

The tenant's unspecified agreement for the landlord to retain part of the deposits does not constitute consent to retain all of the deposits. Deposits are held in trust, and a landlord is obligated to return them to a tenant in accordance with section 38 of the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is successful in her application, I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

The tenant is entitled to a monetary order in the amount of \$6,036.00, comprising \$5,936.00 for the doubled remainder of the security and pet damage deposits, and \$100.00 for the filing fee.

### Conclusion

The tenant is granted a monetary order for \$6,036.00. The monetary order must be served on the landlord. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 20, 2023

---

Residential Tenancy Branch